

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES HOUSTON ANDERSON,  
KIM POWELL, et al,

Defendants.

NO. CR00-482L(C)

GOVERNMENT'S RESPONSE TO  
JAMES ANDERSON'S MOTION  
FOR RETURN OF PROPERTY

On May 25, 2004 the United States of America filed a Supplemental Response to former defendant Kim Powell's Motion for Return of Property in which it asked the Court to assist in resolving the question of return of certain seized property, ownership of which was in dispute between Mr. Powell and his former co-defendant, James Anderson. In order to have a date by which the interested parties should respond, we noted the request for consideration on June 11, 2004. Mr. Anderson has responded by filing his own Motion for Return of Property, and noting it for the same date of June 11, 2004.

In response, we note that seized property is normally to be returned to the person from whom it was seized, once the government's need to retain the property has

1 ceased. United States v. Mills, 991 F.2d 609, 612 (9th Cir. 1993) (There is a  
2 presumption that "a criminal defendant . . . has the right to a return of his property  
3 once it is no longer needed as evidence."); See, United States v. Duncan, 918 F.2d 647,  
4 654 (6th Cir. 1990) ("The general rule is that seized property should be returned to its  
5 rightful owner after the criminal proceedings have terminated."); United States v. Maez  
6 915 F.2d 1446, 1468 (10th Cir. 1990) (seizure of property from someone is prima facie  
7 evidence of that person's subsequent entitlement to the property).

8 Beyond this, however, we take no position as to which parts of the property in  
9 question, if any, should be turned over to Mr. Anderson, or which parts returned to  
10 Mr. Powell. We stand ready to comply with the Court's instruction in this respect.  
11 However, in a further effort to encourage the parties to resolve their dispute without the  
12 necessity for court intervention, we have asked the FAA to review the categorization of  
13 the aviation parts in question that was submitted as an attachment to Mr. Anderson's  
14 pleadings. The FAA's review, together with our letter to the attorneys for Mr.  
15 Anderson and Mr. Powell, transmitting the FAA's review to them, is attached hereto as  
16 Exhibit One, for whatever assistance it may provide to the Court in resolving these  
17 issues.

18  
19 Dated this 8<sup>th</sup> day of June, 2004

20 Respectfully submitted,

21 JOHN MCKAY  
22 UNITED STATES ATTORNEY

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26 PETER O. MUELLER  
27 Assistant United States Attorney  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

That on June 8, 2004, she caused copies of the Government's Supplemental Response to Motion of Kim Powell for Return of Property to be served upon the individuals hereinafter named by the methods specified on the attached Service List:

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DATED this 8th day of June, 2004.

  
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SUSAN S. BURKER  
Supervisory Paralegal